

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 7138**

DATE COMPLAINT FILED: September 20, 2016

DATE OF NOTIFICATION: September 23, 2016

LAST RESPONSE RECEIVED: November 17,  
2016

DATE ACTIVATED: May 15, 2017

EARLIEST SOL: December 18, 2020

LATEST SOL: August 1, 2021

ELECTION CYCLE: 2016

**COMPLAINANT:**

Foundation for Accountability and Civic Trust

**RESPONDENTS:**

Patrick E. Murphy

Thomas P. Murphy

Friends of Patrick Murphy and Brian Foucart in his  
official capacity as treasurer

Senate Majority PAC and Rebecca Lambe in her  
official capacity as treasurer

Floridians for a Strong Middle Class and Jennifer  
May in her official capacity as treasurer  
Coastal Construction Group of South Florida, Inc.

**MUR: 7229**

DATE COMPLAINT FILED: March 15, 2017

DATE OF NOTIFICATION: March 31, 2017

LAST RESPONSE RECEIVED: May 9, 2017

DATE ACTIVATED: May 15, 2017

EARLIEST SOL: December 18, 2020

LATEST SOL: August 1, 2021

ELECTION CYCLE: 2016

**COMPLAINANT:**

Alan Grayson

**RESPONDENTS:**

Patrick E. Murphy

Friends of Patrick Murphy and Brian Foucart in his  
official capacity as treasurer

Senate Majority PAC and Rebecca Lambe in her  
official capacity as treasurer

Floridians for a Strong Middle Class and Jennifer  
May in her official capacity as treasurer

**RELEVANT STATUTES** 52 U.S.C. § 30104(b)  
**AND REGULATIONS:** 52 U.S.C. § 30116(a), (f)  
52 U.S.C. § 30118(a)  
11 C.F.R. § 109.20  
11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

## **I. INTRODUCTION**

The Complaints in these matters allege that then-Representative Patrick E. Murphy ("Rep. Murphy") and his principal campaign committee for his run for U.S. Senate, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer (the "Committee"), coordinated a television advertisement with two independent-expenditure-only political committees ("IEOPCs"): Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer ("SMP"), and Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer ("Floridians"). The Complaints also allege that Thomas P. Murphy, Rep. Murphy's father ("Mr. Murphy"), and Coastal Construction Group of South Florida, Inc., the Murphys' family business ("Coastal Construction"), made large contributions to SMP and Floridians before the commercial aired on television. The Complaints claim that the contributions are evidence that Mr. Murphy and Coastal Construction assisted the campaign in coordinating with the IEOPCs.

As such, the Complaints allege that SMP and Floridians made, and Rep. Murphy, the Committee, Mr. Murphy, and Coastal Construction knowingly accepted, prohibited contributions, which were not properly reported. Because the available information does not suggest that SMP and Floridians coordinated communications or expenditures with Rep. Murphy or the Committee, we recommend that the Commission find no reason to believe that the

1 Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and  
2 close the files.

## 3 II. FACTUAL BACKGROUND

4 Rep. Murphy and his Committee maintained his official campaign website at  
5 www.murphyforflorida.com.<sup>1</sup> The Complaints allege that the Committee used this website to  
6 coordinate with IEOPCs supporting Rep. Murphy's candidacy on the content and distribution of  
7 political advertisements.<sup>2</sup> Specifically, the Complaints allege that the website had an "obscure"  
8 subpage entitled "Media" that contained tips and instructions about the types of ads IEOPCs  
9 should run to maximize the campaign's resources and chances of success.<sup>3</sup>

10 The Complaints claim that the "Media" subpage looked different than the rest of the  
11 website and implicitly conveyed internal campaign information about polling and ad buys that  
12 was otherwise unavailable to the public.<sup>4</sup> They argue that the subpage was therefore meant for a  
13 limited audience.<sup>5</sup> The Complaints also explain that the "Media" page repeatedly used the  
14 phrase "voters need to know," and then followed that phrase with a recitation of the information  
15 the campaign wanted publicized in ads.<sup>6</sup> The Complaints allege that the "Media" page would  
16 indicate which segment of the Florida population should be targeted with the ads, and that Rep.

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<sup>1</sup> Statement of Candidacy, Patrick E. Murphy (Mar. 23, 2015); *WayBack Machine*, INTERNET ARCHIVE (last visited June 15, 2017) (searching for "www.murphyforflorida.com/" shows that the website had a "Paid for by Friends of Patrick Murphy" disclaimer during 2015 and 2016) ("Archived Campaign Website").

<sup>2</sup> See Compl. (MUR 7138) at 1-3 (Sept. 20, 2016); Compl. (MUR 7229) at 1 (Mar. 15, 2017).

<sup>3</sup> Compl. (MUR 7138) at 2, 5.

<sup>4</sup> *Id.* at 5

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2-3, 5.

1 Murphy and the Committee changed the "Media" page when they wanted groups to produce new  
2 advertisements about a different issue.<sup>7</sup>

3 For example, the Complaints allege that in early July 2016, the "Media" page stated:  
4 "Florida Democrats, especially those from Tampa to Orlando, deserve to know that President  
5 Obama endorsed Patrick Murphy."<sup>8</sup> On July 19, 2016, SMP began airing a television  
6 advertisement entitled "Endorse."<sup>9</sup> The ad stated that Democratic Party leaders, including  
7 President Obama, had endorsed Rep. Murphy.<sup>10</sup> Floridians then began paying to air the same ad  
8 around August 1, 2016.<sup>11</sup> The advertisement aired in Tampa and Orlando, where the Committee  
9 had reserved only minimal airtime.<sup>12</sup> After "Endorse" aired, the Committee updated the  
10 "Media" page to focus on opponent Marco Rubio's attendance record at Senate roll call votes.<sup>13</sup>

11 Citing this sequence of events,<sup>14</sup> the Complaints allege that Murphy and the Committee  
12 used the "Media" page to request or suggest that SMP and Floridians run "Endorse," and SMP  
13 and Floridians, by responding, coordinated their communications with Rep. Murphy and the

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<sup>7</sup> *Id.* at 2-3; Compl. (MUR 7229) at 1.

<sup>8</sup> Compl. (MUR 7138) at 3.

<sup>9</sup> *Id.*, Exh.E.

<sup>10</sup> *Id.* at 3; *see also* Michael Auslen, *Democratic PAC Launches Ad Backing Patrick Murphy*, TAMPA BAY TIMES (July 19, 2016), <http://www.tampabay.com/blogs/the-buzz-florida-politics/democratic-super-pac-launches-ad-backing-patrick-murphy/2285928> (providing the full 30-second commercial).

<sup>11</sup> Compl. (MUR 7138), Exh. F.

<sup>12</sup> *Id.* at 3 & Exh. A; Compl. (MUR 7229) at 1.

<sup>13</sup> Compl. (MUR 7138) at 3. The Complaints do not allege that any IEOPC sponsored a communication in response to the Rubio "voters need to know" update. *See id.* Similarly, the Complaints state that the Committee placed "b-roll" video footage of Rep. Murphy on the campaign website, but they do not allege that any IEOPC made use of the footage. *Id.* at 2.

<sup>14</sup> The Complaints emphasize that "Endorse" reflected the content of the campaign's July 2016 post, began airing shortly after the post appeared, aired exclusively in the media markets identified by the "Media" page, and appeared to satisfy the campaign, which updated the "Media" page with new content afterward. *Id.* at 3, 5; Compl. (MUR 7229) at 1.

1 Committee.<sup>15</sup> This resulted in SMP and Floridians making, and Rep. Murphy and the  
2 Committee accepting, prohibited and undisclosed contributions, in violation of 52 U.S.C.  
3 §§ 30104(b), 30116(f), and 30118(a).<sup>16</sup>

4 The Complaints further allege that Mr. Murphy and Coastal Construction violated the  
5 same provisions of the Act by making large contributions to SMP and Floridians before the  
6 IEOPCs produced “Endorse.”<sup>17</sup> Specifically, Mr. Murphy gave SMP \$1 million on July 13,  
7 2016, and gave Floridians \$200,000 on December 18, 2015.<sup>18</sup> Coastal Construction also  
8 contributed \$300,000 to Floridians on March 31, 2016.<sup>19</sup> The Complaints state that Mr. Murphy  
9 and Coastal Construction “presumably [had] campaign information,” and suggest that  
10 Mr. Murphy and Coastal Construction shared information about Rep. Murphy’s advertising  
11 needs with SMP and Floridians when they made the contributions.<sup>20</sup> Thus, the Complaints  
12 allege that Mr. Murphy and Coastal Construction, working on behalf of the campaign,  
13 participated in coordinating the ad.<sup>21</sup>

14 The Respondents (with the exception of Mr. Murphy, who did not file a Response) argue  
15 that the Complaints fail to establish coordination. They claim that the “Media” page was  
16 publicly available and that, under Commission authority, any request or suggestion presented on

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<sup>15</sup> Compl. (MUR 7138) at 6-7.

<sup>16</sup> *Id.* at 4, 6-7.

<sup>17</sup> *Id.* at 3-5.

<sup>18</sup> SMP, August Monthly Report (Aug. 19, 2016); Floridians, 2015 Year-End Report (Jan. 31, 2016).

<sup>19</sup> Floridians, 2016 April Quarterly Report (Apr. 15, 2016).

<sup>20</sup> *See* Compl. (MUR 7138) at 4-5.

<sup>21</sup> *See id.* at 3-5.

1 a publicly available website does not satisfy the conduct prong of the coordination regulations.<sup>22</sup>

2 As to Mr. Murphy's and Coastal Construction's contributions to SMP and Floridians, the

3 Respondents similarly argue that contributions do not satisfy the conduct prong.<sup>23</sup> Furthermore,

4 they contend that the allegations that Mr. Murphy or Coastal Construction discussed the content

5 of the advertisement with the IEOPCs or that the Committee or Rep. Murphy had additional

6 interactions with the IEOPCs beyond the website are speculative.<sup>24</sup>

### 7 **III. LEGAL ANALYSIS**

8 The Act provides that an expenditure made by any person "in cooperation, consultation,

9 or concert, with, or at the request or suggestion of, a candidate, his authorized political

10 committees or their agents" constitutes an in-kind contribution.<sup>25</sup> IEOPCs are prohibited from

11 making contributions to candidates and their authorized committees.<sup>26</sup> It is unlawful for

12 candidates, political committees, and their officers and employees to knowingly accept an

13 excessive or prohibited contribution.<sup>27</sup>

14 The Commission's regulations provide a three-part test for determining when a

15 communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>28</sup> The

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<sup>22</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 2-3 (Nov. 9, 2016); SMP Resp. (MUR 7138) at 2-4 (Nov. 15, 2016); Floridians Resp. (MUR 7138) at 1-2 (Nov. 17, 2016).

<sup>23</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 3-4; SMP Resp. (MUR 7138) at 4 & n.10; Floridians Resp. (MUR 7138) at 3.

<sup>24</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 3-4; SMP Resp. (MUR 7138) at 2, 4-5 & n.10; Floridians Resp. (MUR 7138) at 2; SMP Resp. (MUR 7229) at 1-2 (Apr. 19, 2017); Floridians Resp. (MUR 7229) at 2 (May 9, 2017).

<sup>25</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

<sup>26</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

<sup>27</sup> 52 U.S.C. §§ 30116(f), 30118(a).

<sup>28</sup> 11 C.F.R. § 109.21(a)-(b).

1 communication must: (1) be paid for by a third party; (2) satisfy one of five "content" standards  
2 listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six "conduct" standards listed in 11 C.F.R.  
3 § 109.21(d).<sup>29</sup> Respondents do no dispute that "Endorse" satisfies the "payment" and "content"  
4 requirements.<sup>30</sup> We therefore focus our analysis on the "conduct" standards.<sup>31</sup>

5 **A. Coordination Based on the "Media" Subpage**

6 The Complaints allege that the "Media" page satisfies the request or suggestion conduct  
7 prong because "Endorse" was created and distributed at the request of Rep. Murphy and the  
8 Committee, as communicated through the campaign website.<sup>32</sup> The Commission has explained,  
9 however, that the request or suggestion conduct standard refers to requests or suggestions "made  
10 to a select audience, but not those offered to the public generally," providing, "[A] request that is  
11 posted on a web page that is available to the general public is a request to the general public and  
12 does not trigger the [request or suggestion] conduct standard," whereas a request sent through an  
13 intranet service or by email to a discrete group of recipients would satisfy the standard.<sup>33</sup>

14 The Commission recently considered this issue in MUR 7124 (Katie McGinty for Senate)  
15 and found that there was no coordination when an IEOPC and nonprofit corporation produced  
16 and distributed advertisements that were similar in content to "notices" posted on a Senate

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<sup>29</sup> *Id.* § 109.21(a).

<sup>30</sup> It is clear that third parties—SMP and Floridians—paid for "Endorse," satisfying the first prong of the coordination regulations. *See id.* § 109.21(a)(1). The commercial also satisfies the content standard because it qualifies as a public communication, refers to Rep. Murphy, a clearly identified candidate for Senate, and was publicly distributed within Florida less than 90 days before the August 30, 2016, Democratic Primary Election. *See id.* § 109.21(c)(4)(i); Compl. (MUR 7138) at 5.

<sup>31</sup> The six conduct standards are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) republication. *See* 11 C.F.R. § 109.21(d)(1)-(6).

<sup>32</sup> Compl. (MUR 7138) at 3, 6.

<sup>33</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) ("E&J").

1 candidate's campaign website.<sup>34</sup> Katie McGinty for Senate maintained a subpage on McGinty's  
2 campaign website that it regularly updated with what the Complaint claimed were requests or  
3 suggestions for outside advertising.<sup>35</sup> The Commission concluded that these "notices," however,  
4 did not satisfy any conduct prong because they "appeared on a publicly available website" and  
5 were therefore "directed to the public generally instead of a select audience."<sup>36</sup> The Commission  
6 also stated that the "timing and geographic placement of the commercials" that allegedly resulted  
7 from the "notices" were insufficient to infer that any additional communications had occurred  
8 between McGinty's committee and the ad sponsors.<sup>37</sup>

9 Here, the facts are similar to the McGinty and Shaheen MURs. Contrary to the  
10 Complaints' characterizations, the "Media" page was not obscure and was readily available on  
11 the Committee's website by selecting a link titled "Media" from a banner at the bottom of the  
12 website's homepage.<sup>38</sup> The link brought the viewer to the "Media" subpage, which was still part  
13 of the campaign website.<sup>39</sup> The subpage provided a statement about what Florida voters, and  
14 sometimes particular subsets of Florida voters, needed to know about the Senate race, and

<sup>34</sup> MUR 7124 (Katie McGinty for Senate), Factual & Legal Analysis at 9-10 ("F&LA").

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 10; *see also* MUR 6821 (Shaheen for Senate), F&LA at 1-3, 7-8 (finding that there was no coordination when an IEOPC released a television commercial conveying the same information that the Shaheen campaign and Democratic Senatorial Campaign Committee had posted to the campaign website and Twitter two days earlier).

<sup>37</sup> MUR 7124, F&LA at 10.

<sup>38</sup> *See* Archived Campaign Website, *supra* note 1.

<sup>39</sup> *Id.*



1 sometimes contained a link to additional materials, like news articles, supporting that  
2 statement.<sup>40</sup>

3 Thus, just as in MURs 7124 and 6821, the alleged request or suggestion for advertising  
4 appeared on the candidate's publicly available website and was directed to the public generally  
5 instead of a select audience.<sup>41</sup> As such, the Committee's "Media" page does not satisfy the  
6 request or suggestion conduct standard.<sup>42</sup> Furthermore, similarities between the "Media" page  
7 and the timing, subject matter, and geographic distribution of "Endorse" are insufficient to show  
8 that any additional private communications occurred.<sup>43</sup> As the available information does not  
9 support a reasonable inference that the conduct prong of the coordination test was met, there is  
10 no basis to conclude that "Endorse" qualifies as a coordinated communication,<sup>44</sup> and we  
11 recommend that the Commission find no reason to believe that Rep. Murphy, the Committee,  
12 SMP, and Floridians violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a).

13 **B. Coordination Based on Contributions**

14 Likewise, there is no information suggesting that Mr. Murphy and Coastal Construction  
15 coordinated with SMP and Floridians on the campaign's behalf. The Complaints cite

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<sup>40</sup> See *id.*; see also Compl. (MUR 7138) at 2-3. Because of the prominence of the website and the "Media" page, and the easy-to-understand language used by the Committee and Rep. Murphy in describing what "voters need to know,"

<sup>41</sup> See Archived Campaign Website, *supra* note 1; MUR 6821, F&LA at 1-2; MUR 7124, F&LA at 9-10.

<sup>42</sup> See 11 C.F.R. § 109.21(d)(1); E&J at 432; MUR 6821, F&LA at 7-8; MUR 7124, F&LA at 10. The Complaints allege that the request or suggestion conduct prong, unlike other conduct prongs, "does not state that it does not apply if the 'material was obtained from a publicly available source.'" Compl. (MUR 7138) at 6. Based on this, the Complaints argue that the fact that the "Media" page was publicly available should not prevent the Commission from determining that there was coordination. *Id.* The Complaints' position, however, is erroneous in light of Commission precedent.

<sup>43</sup> See MUR 7124, F&LA at 10; Compl. (MUR 7138) at 5; Compl. (MUR 7229) at 1.

<sup>44</sup> See 11 C.F.R. § 109.21(a).

1 Mr. Murphy's and Coastal Constructions' contributions as evidence of coordination,<sup>45</sup> but the  
2 Commission has already determined in another matter involving Rep. Murphy's 2016 campaign  
3 and Floridians that "[t]he fact that Thomas Murphy and Coastal Construction contributed to  
4 [Floridians], and that Rep. Murphy has an ownership interest in Coastal Construction, without  
5 more, does not appear to satisfy any of the conduct standards."<sup>46</sup> Furthermore, as the Complaints  
6 have not provided any other factual evidence tending to show that Mr. Murphy and Coastal  
7 Construction had knowledge of the campaign's advertising needs or communicated with the  
8 IEOPCs, there is no basis to conclude that Mr. Murphy and Coastal Construction coordinated  
9 with SMP and Floridians, on behalf of the campaign, to create "Endorse."<sup>47</sup> Therefore, we  
10 recommend that the Commission find no reason to believe that any of the Respondents violated  
11 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a) on the basis of the contributions from  
12 Mr. Murphy and Coastal Construction to the IEOPCs.

#### 13 IV. RECOMMENDATIONS

- 14 1. Find no reason to believe that Friends of Patrick Murphy and Brian Foucart in his  
15 official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and  
16 30118(a);
- 17 2. Find no reason to believe that Patrick E. Murphy violated 52 U.S.C. §§ 30104(b),  
18 30116(f), and 30118(a);
- 19 3. Find no reason to believe that Senate Majority PAC and Brian Foucart in his  
20 official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and  
21 30118(a);
- 22
- 23
- 24

<sup>45</sup> Compl. (MUR 7138) at 3-5.

<sup>46</sup> MUR 7067 (Friends of Patrick Murphy), F&LA at 5 (finding no reason to believe that Mr. Murphy and Coastal Construction coordinated communications with Floridians).

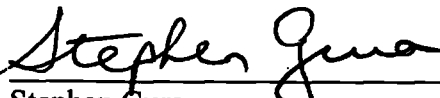
<sup>47</sup> 11 C.F.R. § 109.21(a), (d); MUR 7067, F&LA at 5.


4. Find no reason to believe that Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a);
5. Find no reason to believe that Thomas P. Murphy violated 52 U.S.C. §§ 30116(f) and 30118(a);
6. Find no reason to believe that Coastal Construction Group of South Florida, Inc. violated 52 U.S.C. §§ 30116(f) and 30118(a);
7. Approve the attached Factual and Legal Analysis;
8. Approve the appropriate letters; and
9. Close the file.


Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel for Enforcement

8.14.17  
Date

  
Stephen Gura  
Deputy Associate General Counsel for Enforcement

  
Lynn Y. Tran  
Assistant General Counsel

  
Shanna M. Reulbach  
Attorney

Attachment  
Factual and Legal Analysis

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Patrick E. Murphy MURs: 7138 & 7229  
Thomas P. Murphy  
Friends of Patrick Murphy and Brian Foucart  
in his official capacity as treasurer  
Senate Majority PAC and Rebecca Lambe in  
her official capacity as treasurer  
Floridians for a Strong Middle Class and Jennifer  
May in her official capacity as treasurer  
Coastal Construction Group of South Florida, Inc.

### I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission (the "Commission") by the Foundation for Accountability and Civic Trust and Alan Grayson. The Complaints allege that then-Representative Patrick E. Murphy ("Rep. Murphy") and his principal campaign committee for his run for U.S. Senate, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer (the "Committee"), coordinated a television advertisement with two independent-expenditure-only political committees ("IEOPCs"): Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer ("SMP"), and Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer ("Floridians"). The Complaints also allege that Thomas P. Murphy, Rep. Murphy's father ("Mr. Murphy"), and Coastal Construction Group of South Florida, Inc., the Murphys' family business ("Coastal Construction"), made large contributions to SMP and Floridians before the commercial aired on television. The Complaints claim that the contributions are evidence that Mr. Murphy and Coastal Construction assisted the campaign in coordinating with the IEOPCs. As such, the Complaints allege that SMP and Floridians made, and Rep. Murphy, the Committee, Mr. Murphy, and Coastal Construction knowingly accepted, prohibited

contributions, which were not properly reported. Because the available information does not suggest that SMP and Floridians coordinated communications or expenditures with Rep. Murphy or the Committee, the Commission finds no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and close the files.

## II. FACTUAL BACKGROUND

Rep. Murphy and his Committee maintained his official campaign website at [www.murphyforflorida.com](http://www.murphyforflorida.com).<sup>1</sup> The Complaints allege that the Committee used this website to coordinate with IEOPCs supporting Rep. Murphy’s candidacy on the content and distribution of political advertisements.<sup>2</sup> Specifically, the Complaints allege that the website had an “obscure” subpage entitled “Media” that contained tips and instructions about the types of ads IEOPCs should run to maximize the campaign’s resources and chances of success.<sup>3</sup>

The Complaints claim that the “Media” subpage looked different than the rest of the website and implicitly conveyed internal campaign information about polling and ad buys that was otherwise unavailable to the public.<sup>4</sup> They argue that the subpage was therefore meant for a limited audience.<sup>5</sup> The Complaints also explain that the “Media” page repeatedly used the phrase “voters need to know,” and then followed that phrase with a recitation of the information the campaign wanted publicized in ads.<sup>6</sup> The Complaints allege that the “Media” page would

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<sup>1</sup> Statement of Candidacy, Patrick E. Murphy (Mar. 23, 2015); *WayBack Machine*, INTERNET ARCHIVE (last visited June 15, 2017) (searching for “[www.murphyforflorida.com/](http://www.murphyforflorida.com/)” shows that the website had a “Paid for by Friends of Patrick Murphy” disclaimer during 2015 and 2016) (“Archived Campaign Website”).

<sup>2</sup> See Compl. (MUR 7138) at 1-3 (Sept. 20, 2016); Compl. (MUR 7229) at 1 (Mar. 15, 2017).

<sup>3</sup> Compl. (MUR 7138) at 2, 5.

<sup>4</sup> *Id.* at 5

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2-3, 5.

1 indicate which segment of the Florida population should be targeted with the ads, and that Rep.  
2 Murphy and the Committee changed the “Media” page when they wanted groups to produce new  
3 advertisements about a different issue.<sup>7</sup>

4 For example, the Complaints allege that in early July 2016, the “Media” page stated:  
5 “Florida Democrats, especially those from Tampa to Orlando, deserve to know that President  
6 Obama endorsed Patrick Murphy.”<sup>8</sup> On July 19, 2016, SMP began airing a television  
7 advertisement entitled “Endorse.”<sup>9</sup> The ad stated that Democratic Party leaders, including  
8 President Obama, had endorsed Rep. Murphy.<sup>10</sup> Floridians then began paying to air the same ad  
9 around August 1, 2016.<sup>11</sup> The advertisement aired in Tampa and Orlando, where the Committee  
10 had reserved only minimal airtime.<sup>12</sup> After “Endorse” aired, the Committee updated the  
11 “Media” page to focus on opponent Marco Rubio’s attendance record at Senate roll call votes.<sup>13</sup>

12 Citing this sequence of events,<sup>14</sup> the Complaints allege that Murphy and the Committee  
13 used the “Media” page to request or suggest that SMP and Floridians run “Endorse,” and SMP

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<sup>7</sup> *Id.* at 2-3; Compl. (MUR 7229) at 1.

<sup>8</sup> Compl. (MUR 7138) at 3.

<sup>9</sup> *Id.*, Exh.E.

<sup>10</sup> *Id.* at 3; see also Michael Auslen, *Democratic PAC Launches Ad Backing Patrick Murphy*, TAMPA BAY TIMES (July 19, 2016), <http://www.tampabay.com/blogs/the-buzz-florida-politics/democratic-super-pac-launches-ad-backing-patrick-murphy/2285928> (providing the full 30-second commercial).

<sup>11</sup> Compl. (MUR 7138), Exh. F.

<sup>12</sup> *Id.* at 3 & Exh. A; Compl. (MUR 7229) at 1.

<sup>13</sup> Compl. (MUR 7138) at 3. The Complaints do not allege that any IEOPC sponsored a communication in response to the Rubio “voters need to know” update. See *id.* Similarly, the Complaints state that the Committee placed “b-roll” video footage of Rep. Murphy on the campaign website, but they do not allege that any IEOPC made use of the footage. *Id.* at 2.

<sup>14</sup> The Complaints emphasize that “Endorse” reflected the content of the campaign’s July 2016 post, began airing shortly after the post appeared, aired exclusively in the media markets identified by the “Media” page, and

1 and Floridians, by responding, coordinated their communications with Rep. Murphy and the  
2 Committee.<sup>15</sup> This resulted in SMP and Floridians making, and Rep. Murphy and the  
3 Committee accepting, prohibited and undisclosed contributions, in violation of 52 U.S.C.  
4 §§ 30104(b), 30116(f), and 30118(a).<sup>16</sup>

5 The Complaints further allege that Mr. Murphy and Coastal Construction violated the  
6 same provisions of the Act by making large contributions to SMP and Floridians before the  
7 IEOPCs produced “Endorse.”<sup>17</sup> Specifically, Mr. Murphy gave SMP \$1 million on July 13,  
8 2016, and gave Floridians \$200,000 on December 18, 2015.<sup>18</sup> Coastal Construction also  
9 contributed \$300,000 to Floridians on March 31, 2016.<sup>19</sup> The Complaints state that Mr. Murphy  
10 and Coastal Construction “presumably [had] campaign information,” and suggest that  
11 Mr. Murphy and Coastal Construction shared information about Rep. Murphy’s advertising  
12 needs with SMP and Floridians when they made the contributions.<sup>20</sup> Thus, the Complaints  
13 allege that Mr. Murphy and Coastal Construction, working on behalf of the campaign,  
14 participated in coordinating the ad.<sup>21</sup>

15 The Respondents (with the exception of Mr. Murphy, who did not file a Response) argue  
16 that the Complaints fail to establish coordination. They claim that the “Media” page was

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appeared to satisfy the campaign, which updated the “Media” page with new content afterward. *Id.* at 3, 5; Compl. (MUR 7229) at 1.

<sup>15</sup> Compl. (MUR 7138) at 6-7.

<sup>16</sup> *Id.* at 4, 6-7.

<sup>17</sup> *Id.* at 3-5.

<sup>18</sup> SMP, August Monthly Report (Aug. 19, 2016); Floridians, 2015 Year-End Report (Jan. 31, 2016).

<sup>19</sup> Floridians, 2016 April Quarterly Report (Apr. 15, 2016).

<sup>20</sup> See Compl. (MUR 7138) at 4-5.

<sup>21</sup> See *id.* at 3-5.

publicly available and that, under Commission authority, any request or suggestion presented on a publicly available website does not satisfy the conduct prong of the coordination regulations.<sup>22</sup> As to Mr. Murphy's and Coastal Construction's contributions to SMP and Floridians, the Respondents similarly argue that contributions do not satisfy the conduct prong.<sup>23</sup> Furthermore, they contend that the allegations that Mr. Murphy or Coastal Construction discussed the content of the advertisement with the IEOPCs or that the Committee or Rep. Murphy had additional interactions with the IEOPCs beyond the website are speculative.<sup>24</sup>

### III. LEGAL ANALYSIS

The Act provides that an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents" constitutes an in-kind contribution.<sup>25</sup> IEOPCs are prohibited from making contributions to candidates and their authorized committees.<sup>26</sup> It is unlawful for candidates, political committees, and their officers and employees to knowingly accept an excessive or prohibited contribution.<sup>27</sup>

<sup>22</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 2-3 (Nov. 9, 2016); SMP Resp. (MUR 7138) at 2-4 (Nov. 15, 2016); Floridians Resp. (MUR 7138) at 1-2 (Nov. 17, 2016).

<sup>23</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 3-4; SMP Resp. (MUR 7138) at 4 & n.10; Floridians Resp. (MUR 7138) at 3.

<sup>24</sup> Rep. Murphy, Committee & Coastal Construction Resp. (MUR 7138) at 3-4; SMP Resp. (MUR 7138) at 2, 4-5 & n.10; Floridians Resp. (MUR 7138) at 2; SMP Resp. (MUR 7229) at 1-2 (Apr. 19, 2017); Floridians Resp. (MUR 7229) at 2 (May 9, 2017).

<sup>25</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

<sup>26</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

<sup>27</sup> 52 U.S.C. §§ 30116(f), 30118(a).



1 The Commission's regulations provide a three-part test for determining when a  
2 communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>28</sup> The  
3 communication must: (1) be paid for by a third party; (2) satisfy one of five "content" standards  
4 listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six "conduct" standards listed in 11 C.F.R.  
5 § 109.21(d).<sup>29</sup> Respondents do no dispute that "Endorse" satisfies the "payment" and "content"  
6 requirements.<sup>30</sup> We therefore focus our analysis on the "conduct" standards.<sup>31</sup>

7 **A. Coordination Based on the "Media" Subpage**

8 The Complaints allege that the "Media" page satisfies the request or suggestion conduct  
9 prong because "Endorse" was created and distributed at the request of Rep. Murphy and the  
10 Committee, as communicated through the campaign website.<sup>32</sup> The Commission has explained,  
11 however, that the request or suggestion conduct standard refers to requests or suggestions "made  
12 to a select audience, but not those offered to the public generally," providing, "[A] request that is  
13 posted on a web page that is available to the general public is a request to the general public and

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<sup>28</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>29</sup> *Id.* § 109.21(a).

<sup>30</sup> It is clear that third parties—SMP and Floridians—paid for "Endorse," satisfying the first prong of the coordination regulations. *See id.* § 109.21(a)(1). The commercial also satisfies the content standard because it qualifies as a public communication, refers to Rep. Murphy, a clearly identified candidate for Senate, and was publicly distributed within Florida less than 90 days before the August 30, 2016, Democratic Primary Election. *See id.* § 109.21(c)(4)(i); Compl. (MUR 7138) at 5.

<sup>31</sup> The six conduct standards are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) republication. *See* 11 C.F.R. § 109.21(d)(1)-(6).

<sup>32</sup> Compl. (MUR 7138) at 3, 6.

1 does not trigger the [request or suggestion] conduct standard,” whereas a request sent through an  
2 intranet service or by email to a discrete group of recipients would satisfy the standard.<sup>33</sup>

3 The Commission recently considered this issue in MUR 7124 (Katie McGinty for Senate)  
4 and found that there was no coordination when an IEOPC and nonprofit corporation produced  
5 and distributed advertisements that were similar in content to “notices” posted on a Senate  
6 candidate’s campaign website.<sup>34</sup> Katie McGinty for Senate maintained a subpage on McGinty’s  
7 campaign website that it regularly updated with what the Complaint claimed were requests or  
8 suggestions for outside advertising.<sup>35</sup> The Commission concluded that these “notices,” however,  
9 did not satisfy any conduct prong because they “appeared on a publicly available website” and  
10 were therefore “directed to the public generally instead of a select audience.”<sup>36</sup> The Commission  
11 also stated that the “timing and geographic placement of the commercials” that allegedly resulted  
12 from the “notices” were insufficient to infer that any additional communications had occurred  
13 between McGinty’s committee and the ad sponsors.<sup>37</sup>

14 Here, the facts are similar to the McGinty and Shaheen MURs. Contrary to the  
15 Complaints’ characterizations, the “Media” page was not obscure and was readily available on  
16 the Committee’s website by selecting a link titled “Media” from a banner at the bottom of the

<sup>33</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) (“E&J”).

<sup>34</sup> MUR 7124 (Katie McGinty for Senate), Factual & Legal Analysis at 9-10 (“F&LA”).

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 10; *see also* MUR 6821 (Shaheen for Senate), F&LA at 1-3, 7-8 (finding that there was no coordination when an IEOPC released a television commercial conveying the same information that the Shaheen campaign and Democratic Senatorial Campaign Committee had posted to the campaign website and Twitter two days earlier).

<sup>37</sup> MUR 7124, F&LA at 10.

1 website's homepage.<sup>38</sup> The link brought the viewer to the "Media" subpage, which was still part  
2 of the campaign website.<sup>39</sup> The subpage provided a statement about what Florida voters, and  
3 sometimes particular subsets of Florida voters, needed to know about the Senate race, and  
4 sometimes contained a link to additional materials, like news articles, supporting that  
5 statement.<sup>40</sup>

6 Thus, just as in MURs 7124 and 6821, the alleged request or suggestion for advertising  
7 appeared on the candidate's publicly available website and was directed to the public generally  
8 instead of a select audience.<sup>41</sup> As such, the Committee's "Media" page does not satisfy the  
9 request or suggestion conduct standard.<sup>42</sup> Furthermore, similarities between the "Media" page  
10 and the timing, subject matter, and geographic distribution of "Endorse" are insufficient to show  
11 that any additional private communications occurred.<sup>43</sup> As the available information does not  
12 support a reasonable inference that the conduct prong of the coordination test was met, there is  
13 no basis to conclude that "Endorse" qualifies as a coordinated communication,<sup>44</sup> and the  
14 Commission finds no reason to believe that Rep. Murphy, the Committee, SMP, and Floridians  
15 violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a).

<sup>38</sup> See Archived Campaign Website, *supra* note 1.

<sup>39</sup> *Id.*

<sup>40</sup> See *id.*; see also Compl. (MUR 7138) at 2-3.

<sup>41</sup> See Archived Campaign Website, *supra* note 1; MUR 6821, F&LA at 1-2; MUR 7124, F&LA at 9-10.

<sup>42</sup> See 11 C.F.R. § 109.21(d)(1); E&J at 432; MUR 6821, F&LA at 7-8; MUR 7124, F&LA at 10. The Complaints allege that the request or suggestion conduct prong, unlike other conduct prongs, "does not state that it does not apply if the material was obtained from a publicly available source." Compl. (MUR 7138) at 6. Based on this, the Complaints argue that the fact that the "Media" page was publicly available should not prevent the Commission from determining that there was coordination. *Id.* The Complaints' position, however, is erroneous in light of Commission precedent.

<sup>43</sup> See MUR 7124, F&LA at 10; Compl. (MUR 7138) at 5; Compl. (MUR 7229) at 1.

<sup>44</sup> See 11 C.F.R. § 109.21(a).

**B. Coordination Based on Contributions**

Likewise, there is no information suggesting that Mr. Murphy and Coastal Construction coordinated with SMP and Floridians on the campaign's behalf. The Complaints cite Mr. Murphy's and Coastal Construction's contributions as evidence of coordination,<sup>45</sup> but the Commission has already determined in another matter involving Rep. Murphy's 2016 campaign and Floridians that "[t]he fact that Thomas Murphy and Coastal Construction contributed to [Floridians], and that Rep. Murphy has an ownership interest in Coastal Construction, without more, does not appear to satisfy any of the conduct standards."<sup>46</sup> Furthermore, as the Complaints have not provided any other factual evidence tending to show that Mr. Murphy and Coastal Construction had knowledge of the campaign's advertising needs or communicated with the IEOPCs, there is no basis to conclude that Mr. Murphy and Coastal Construction coordinated with SMP and Floridians, on behalf of the campaign, to create "Endorse."<sup>47</sup> Therefore, the Commission finds no reason to believe that any of the Respondents violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a) on the basis of the contributions from Mr. Murphy and Coastal Construction to the IEOPCs.

<sup>45</sup> Compl. (MUR 7138) at 3-5.

<sup>46</sup> MUR 7067 (Friends of Patrick Murphy), F&LA at 5 (finding no reason to believe that Mr. Murphy and Coastal Construction coordinated communications with Floridians).

<sup>47</sup> 11 C.F.R. § 109.21(a), (d); MUR 7067, F&LA at 5.